IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2991 OF 2005

Nalini Naresh Kumta .. ..Petitioner
Versus
Deputy Registrar, Coop. Socy. & Anr. ..Respondents

Mr.A.V.Bajaj i/b M/s. Raymond & Co. for petitioner
Mr. P.M.Palshikar, AGP respondent nos.1 and 3

CORAM : P.V.KAKADE, J.

DATE : 21ST DECEMBER, 2005

P.C.:

1. Heard the learned counsel for both the parties.

2. Rule, rule made returnable forthwith by consent.

3. The petitioner sought direction that the action on the part of the respondent no.1 of disqualifying the petitioner from acting as the member of the managing committee of respondent no.2 society as also its Chairperson is illegal, unconstitutional, invalid ab-inito and in breach of the statutory duty that the respondent no.1 is legally bound and for consequential reliefs.

4. The Petitioner was elected as a Chairman in the Election of the General Body of the said Cooperative Society for the period 2002-2005 in the year 2002 and the new Managing Committee took charge of the affairs of the society. In January 2003 a letter was addressed by the society to the petitioner making false allegations about the misappropriation of fund of the society. The petitioner filed a Dispute in the 2nd Cooperative Court at Mumbai and also a criminal complaint came to be filed. The Respondent no.1 directed and appointed an Election Officer to conduct the election of the Managing Committee of the society. The petitioner and 23 other members of the society addressed a letter to the Respondent no.1 pointing out various irregularities, mismanagement and misappropriation of the funds and sought postponement of the election, however, it was not done by the respondent no.1.

5. The dispute finally culminated in passing of the order by respondent no.1 on 18.10.2005 directing that the election of petitioner - Chairman of Cooperative Housing Society was to be made ineffective from the post of Managing Committee and post of Chairman. The said

order is being impugned in this Petition on various grounds.

6. After hearing both the parties for some time and taking into account the facts and circumstances, I am satisfied that the impugned order was passed without taking into account the relevant aspect involved in the dispute which ultimately culminated in cause in prejudice to the cause of the petitioner. In view of this aspect, the order is found to be clearly unsustainable in law and hence I am inclined to remand the matter to the concerned authority for hearing afresh as contemplated under the provisions of the Maharashtra Cooperative Societies Act.

7. So far as appointment of Chairmanship is concerned the learned counsel for the respondents made statement that in place of Petitioner one Mr.Vijay Khote is elected as a Chairman, who is incharge of the affairs in his capacity as Chairman of the Society as on today and therefore, no directions are required to be issued in this regard by this Court at this juncture. Hence, the order dated 18.10.2005 issued by the Respondent no.1 is hereby set aside and the matter is remanded back to

the concerned authority for hearing afresh with direction that both the parties be given proper opportunity to put up their cases and to adjudicate the dispute on merits within eight weeks from the date of receipt of Writ of this Court.

8. With this direction the petition stands disposed of with no order as to costs.